

124 FERC ¶ 61,236  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Allegheny Power

Docket No. QM08-6-000

ORDER GRANTING APPLICATION TO TERMINATE PURCHASE OBLIGATION

(Issued September 11, 2008)

1. On June 18, 2008, Allegheny Power (Allegheny) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978<sup>1</sup> (PURPA), and section 292.310 of the Commission's regulations<sup>2</sup> seeking termination on a service territory-wide basis of the obligation to enter into new obligations or contracts to purchase energy and capacity from qualifying cogeneration and small power production facilities (QFs) with net capacity in excess of 20 MW. In this order, we grant Allegheny's application.

**Background**

2. On October 20, 2006, the Commission issued Order No. 688,<sup>3</sup> in which the Commission revised its regulations governing utilities' obligation to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m),<sup>4</sup> which, as relevant here, provides for termination of the requirement that an electric utility enter into new obligations or contracts to purchase electric energy from QFs if the Commission finds that the QFs have nondiscriminatory access to markets.

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<sup>1</sup> 16 U.S.C.A. § 824a-3(m) (2006).

<sup>2</sup> 18 C.F.R. § 292.310 (2008).

<sup>3</sup> *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233 (2006), *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007).

<sup>4</sup> Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005. *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967-69 (2005).

3. As relevant here, the Commission found in Order No. 688 that the markets administered by PJM Interconnection, L.L.C. (PJM) satisfy the criteria of PURPA section 210(m)(1)(A).<sup>5</sup> Accordingly, section 292.309(e) of the Commission's regulations established a rebuttable presumption that PJM provides large QFs (over 20 MW net capacity) interconnected with member electric utilities with nondiscriminatory access to markets described in PURPA section 210(m)(1)(A).<sup>6</sup>

### **Allegheny's Filing**

4. In its application, Allegheny states that it meets the requirements for relief under section 292.309(a)(1) of the Commission's regulations.<sup>7</sup> Allegheny states that it is a member of PJM. Allegheny also states that it is relying on the rebuttable presumptions contained in section 292.309(e) that, as a member of PJM, it should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity. Accordingly, Allegheny asks for relief, on a service territory-wide basis, of the requirement to enter into new power purchase obligations or contracts with QFs that have a net capacity greater than 20 MW.

### **Notice and Responsive Pleadings**

5. Notice of Allegheny's filing was served on the potentially-affected QFs identified in its application.<sup>8</sup> Notice of Allegheny's filing was also published in the *Federal Register*, 73 Fed. Reg. 36,313 (2008), with interventions or protests due on or before July 16, 2008. PJM, American Bituminous Power Partners, LP, and Allegheny Hydro Partners LTD filed timely motions to intervene raising no issues. No protests were filed.

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<sup>5</sup> 16 U.S.C. § 842a-3(m)(1)(A) (2006); *see* 18 C.F.R. § 292.309(a)(1) (2008).

<sup>6</sup> 18 C.F.R. § 292.309(e) (2008).

<sup>7</sup> 18 C.F.R. § 292.309(a)(1) (2008).

<sup>8</sup> Allegheny identifies seven potentially-affected QFs in its application: AES Beaver Valley, L.L.C.; AES WR Limited Partnership; Morgantown Energy Associates; New Martinsville Hannibal Hydroelectric Plant; Allegheny Hydro Partners, Ltd.; Allegheny No. 6 Hydro Partners; and American Bituminous Power Partners, L.P.

## **Discussion**

### **Procedural Matters**

6. Pursuant to Rule 214 of the Commissions Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **Commission Determination**

7. Allegheny, as a member of PJM, relies upon the rebuttable presumptions set forth in section 292.309(e) of our regulations, i.e., that PJM provides QFs larger than 20 MW net capacity nondiscriminatory access to independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy and that members of PJM should be relieved of the obligation to purchase electric energy from QFs.<sup>9</sup> The potentially-affected QFs identified by Allegheny were provided notice of Allegheny's application and did not protest.<sup>10</sup> Accordingly, we find, based on the unrebutted statements in Allegheny's application, that Allegheny provides QFs larger than 20 MW nondiscriminatory access to independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy.

8. We, therefore, grant Allegheny's request to terminate its obligation under section 292.303(a) of our regulations to enter into new power purchase obligations or contracts with QFs that have a capacity in excess of 20 MW net capacity and that are in Allegheny's service territory in PJM.<sup>11</sup>

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<sup>9</sup> 18 C.F.R. §§ 292.309(a)(1), .309(e) (2008).

<sup>10</sup> To the extent that a potentially-affected QF is 20 MW or smaller this order does not terminate the purchase obligation for that QF.

<sup>11</sup> 18 C.F.R. § 292.309(a) (2008). If at any time a QF believes that it does not have nondiscriminatory access to markets that satisfy the criteria for relieving an electric utility of its purchase obligation, the QF may file an application pursuant to section 292.311 of our regulations, 18 C.F.R. § 292.311 (2008), for an order reinstating the electric utility's purchase obligation.

The Commission orders:

The application of Allegheny Power for termination, on a service territory-wide basis, of the obligation to enter into new power purchase obligations or contracts with QFs that have a net capacity in excess of 20 MW is hereby granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.